

EXHIBIT E

In The Matter Of:

*THE PEOPLE OF THE STATE OF NEW YORK v.
FRANK DiTOMMASO AND PETER DiTOMMASO*

TRIAL TESTIMONY

November 5, 2012

*Valerie E. Monaco
265 East 161st Street, Room 264
Bronx, New York 10451
(718) 618-1513*

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1 THE COURT: Hopefully --- You pled guilty -- You
2 pled guilty --

3 THE WITNESS: Right.

4 THE COURT: -- to something, and you had to say
5 what it was you did. So, tell us what it was.

6 THE WITNESS: When I pled, I said that I tried to
7 get them insurance, get the company insurance and surety
8 showing knowing that they were --- that they were going ---
9 that they didn't have the money to warrant it and to --- and
10 that they were --- it was a fraud or a suspecting even
11 though --- knowing or suspecting that it was a fraud.

12 Q And you pled guilty in December of 2001; correct?

13 A I believe that's correct.

14 Q And, ultimately, in 2003 you were sentenced it five
15 years probation --

16 A Yes.

17 Q -- three hundred hours of community service?

18 A I believe so.

19 Q Five thousand dollar fine?

20 A I believe so.

21 Q At the time of your sentencing, did you --- your lawyers
22 mentioned something about your having a "brain fog?"

23 A Yes.

24 Q Can you describe for the jurors what that was and why
25 that was done?

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1 A It was -- It was borne out of a very frustrating time.
2 Lawyers trying to fight the case ordeal with it because there was
3 not one piece of evidence put forth to the case and none that we
4 ever saw existed, and I maintained all along that I did not do
5 this and did not happen and was advised by my attorneys at that
6 time that I had to take the plea.

7 Q So, you pled guilty. You were claiming that you weren't
8 guilty?

9 A Yes.

10 Q Is that what you're saying? And what was the purpose at
11 your sentencing of alleging that you had some sort of a brain fog
12 with respect to that case?

13 A Because at the time, several of my attorneys wanted to
14 still fight it, and they couldn't see any other way to fight it,
15 and it was a suggestion that came up by one of my attorneys
16 because I had had a liver disorder a few years earlier, years
17 earlier, like over six, seven years earlier.

18 Q Well, what is "brain fog?" Did you have it?

19 A At the time earlier I did, and then basically what ended
20 up happening is I ended up getting treated for ADHD subsequent to
21 that which I do have and, you know, from what I've been told,
22 it's like it could happen when you're under stress or not, but it
23 was more something that it was a suggestion by the attorneys. It
24 wasn't something that ---

25 Q You're saying now that you pled guilty, but that you

1806

1 weren't guilty?

2 A I don't believe I was guilty.

3 Q Why did you plead guilty?

4 A Because I was advised by counsel and it didn't happen.
5 I didn't have any other thing to do. I had a new daughter, and I
6 love my two daughters, they're the most important thing in the
7 world to me, and I was told by the prosecutor that morning that
8 you're not going to see your daughter for fifteen years, and by
9 that time I was also being forced that morning to represent
10 myself at trial because I had run out of money and didn't have
11 the morning on --- the morning of the trial when the plea
12 happened, and I believe the part ---

13 You're talking about my brain fog came later at
14 sentencing, if I remember?

15 Q Right. Now, in December of 2004, did you go public with
16 what you knew about who was paying for the renovations of the
17 Bernie Kerik's apartment?

18 MS. FLEMING: Objection.

19 THE COURT: Sustained.

20 MS. FLEMING: Objection to leading.

21 THE COURT: Sustained.

22 Q Did there come a time that you went public with what you
23 do about who was paying for Bernie Kerik's renovations?

24 MS. FLEMING: Same objection, Your Honor.

25 THE COURT: Sustained. We rephrase it.